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Paper No. 5

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AUG 31 2001

In re Application of
Van Kampen, et al.
Application No. 09/689,621
Filed: October 13, 2000
Attorney Docket No.: 7203.01
For: TREATMENT OF DERMAL TUMORS,
WARTS, AND VIRAL INFECTIONS OF THE
RESPIRATORY TRACT IN HUMANS USING
HEAT-KILLED P. ACNES

OFFICE OF PETITIONS
DECISION DISMISSING
PETITION UNDER 37 CFR
1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed July 27, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed October 13, 2000 without an executed oath or declaration and naming Kent R. Van Kampen and Bobby Edwards as the joint inventors.

Accordingly, on January 25, 2001, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing. The instant petition was filed in response.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks items (1), (2), and (4) set forth above.

As to item (1), the petition lacks sufficient evidence to establish that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refuses to sign the oath or declaration.

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The affidavit of Kent Van Kampen states that on April 25, 2001, affiant sent a copy of the application and assignment documents to the inventor for execution. Petitioner has failed to provide evidence to corroborate this statement.

The affidavit of Brian Laurenzo accompanying the instant petition states that on June 6, 2001, the inventor, during a telephone conversation, stated he would not sign the declaration without certain conditions being met. The affidavit also indicates that on June 8, 2001, affiant forwarded to the inventor a declaration for execution.

Petitioner is reminded that "before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney." See, MPEP 409.03(d).

Petitioner has failed to provide supporting evidence that the inventor was presented with a copy of the application papers (specification, claims and drawings) prior to verbal refusal discussed in the affidavit of Brian J. Laurenzo.

Any renewed petition must be accompanied by evidence that a *bona fide* attempt was made to present the application papers to the inventor at the inventor's last known address prior to any alleged refusal to sign the declaration.

As to item (2), the declaration submitted with the instant petition is not acceptable as it has not been executed. Where it is alleged in a petition under 37 CFR 1.47(a) that an inventor cannot be located or refuses to sign the oath or declaration, the remaining inventor should sign the oath or declaration in his own name and on behalf of the non-signing inventor. Therefore, the signature block of the non-signing inventor should remain unexecuted. Petitioner is advised that any renewed petition should include a properly executed oath or declaration.

As to item (4), petitioner is required to verify the last known address of the inventor. The petition states the last known address of the non-signing inventor to be Neotech, LLC, 10061 Hwy. 22, Dresden, TN 38225. The copy of the letter dated June 8, 2001 from Brian J. Laurenzo to the inventor is otherwise addressed. Additionally, the address should be the last known address at which the inventor customarily receives mail.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn.: Office of Petitions

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By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
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Telephone inquiries related to this decision may be directed to
Petitions Attorney Alesia M. Brown at (703) 305-0310.

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